



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 05, 2022

IN THE MATTER OF:

Appeal Board No. 621819

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 621818 and 621819, the claimant appeals from the decisions of the Administrative Law Judge filed February 11, 2022, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective January 31, 2021, on the basis that the claimant voluntarily separated from employment without good cause, and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$6,300 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$5,229 in Pandemic Emergency Unemployment Compensation recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. The Administrative Law Judge determined that the claimant did not take sufficient steps to preserve his employment, without first asking whether the parties were ready to address this and offering them an adjournment in order to prepare more before the case continued. The parties are now placed on notice that at the remand hearing, the Judge will consider whether the claimant failed to take reasonable steps to preserve his employment before quitting, either by bringing his concerns to the employer to be addressed so that he could continue his employment or requesting a leave of absence.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determinations of voluntary leaving of from employment without good cause, and recoverable overpayments of benefits, is rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing of voluntary leaving of from employment without good cause, and recoverable overpayments of benefits, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER